1	MA	RY K	AY SIGA	ATY,				*	BE	FORE '	THE			
2	CO	UNCII	PERSO	N, PE	TITIO	NER		*	PL	ANNIN	G BOA	ARD OI	स	
3	ZRA	A-83						*	НО	WARD	COU	NTY, M	IARYL	AND
4	*	*	*	*	*	*	*	*	*	*	*	*	*	*
5		MO	TION:	To r	ecomm	end dei	nial of i	the prop	osal to	amend	Section	100.E.	of the	
6				Zon	ing Reg	gulation	is to cre	eate a gr	randfat	hering	clause i	hat wo	uld requ	ıire
7				case	s that a	re und	er judic	ial revi	ew to be	e subjec	t to Zoi	ing Re	gulatio	n
8				char	nges for	all per	nding a	nd futu	re proce	eedings	and ac	tion of	any Boo	ırd,
9				Hea	ring Ex	aminer	r or age	псу ет	powere	d to dec	ide app	lication	s under	· the
10				Zoni	ing Reg	ulation	ıs.							
11		AC.	ΓΙΟΝ:	Reco	ommen	ded den	ial; Vo	te 4 to 0).					
12	*	*	*	*	*	*	*	*	*	*	*	*	*	*
13						REC	COMN	IENDA	TION	•				
14		On A	April 17,	2007 a	ınd May	y 24, 20	07, wit	h the rec	cord lef	t open f	or writt	en com	ments u	ntil
15	June	1 st , 200	07, the Pl	lanning	g Board	(Board) of Ho	ward Co	ounty, N	- ⁄Iarylan	d, consi	dered tl	he petiti	on of

On April 17, 2007 and May 24, 2007, with the record left open for written comments until June 1st, 2007, the Planning Board (Board) of Howard County, Maryland, considered the petition of Mary Kay Sigaty, Councilperson, (Petitioner) for an amendment to the Zoning Regulations to create a grandfathering clause that would require cases that are under judicial review to be subject to Zoning Regulation Amendments (ZRA) and changes for all pending and future proceedings and action of any Howard County Board, Hearing Examiner or agency empowered to decide applications under the Zoning Regulations.

The petition, the Department of Planning and Zoning Technical Staff Report and Recommendation, (Staff Report) were presented to the Board for its consideration. The Department of Planning and Zoning (DPZ) recommenced that the Petitioner's request be denied because care must be exercised in balancing the desire to strengthen the requirements for future development with equity for development proposals initiated; the amendment would be a significant departure from past Howard County grandfathering practices, as well as those of surrounding jurisdictions; and it would apply to any development proposal that has been appealed thereby having far reaching consequences that could place any development proposal in jeopardy by a single appellant, regardless of the appeal's merits. (Staff Report, pages 3-4).

Petitioners Request

Petitioner's proposal seeks to clarify an area that she contends is silent in the zoning

regulations. More specifically, Petitioner proposes including specific language that cases and applications for approval of subdivision or SDP plans that are undergoing judicial review either by a timely appeal or petition are considered "pending" for the purpose of applying newly adopted zoning regulations. This would apply to an appealed Decision and Order. Pursuant to section 100.E.3.b. the addition of this language would also clarify that a "technically complete" subdivision or site development plan would also require exhaustion of timely appeals or petitions for judicial review before the project could be grandfathered under the previous zoning regulations and not subject to the newly adopted regulations. Petitioner explained that this clarification is necessary to assure the public that the administrative and judicial appeals process at every stage of the development approval process, as allowed by the zoning regulations, had been exhausted before it is allowed to proceed or be grandfathered in under prior regulations. Petitioner essentially seeks to clarify when a project is deemed "pending" to include those that are undergoing judicial review.

The Petitioner stated the amendment is in harmony with the 2000 Howard County General Plan (General Plan) Policy 5.20, "Improve communication between citizens and County agencies and encourage active, sustained public participation". Specifically, she stated that the amendment serves the public interest by allowing and encouraging full public participation in the early stages with the County and developer would result in fewer appeals. She did not believe that this legislation hindered the business community but in fact sent the message that citizens want to be heard and work cooperatively with the County and business community in land use decisions. The Petitioner reiterated that it is important to government and the community that projects moving forward are actually completed and settle before they are no longer considered "pending".

Petitioner also noted in her petition additional reasons for this legislation: "to ensure that future development projects adhere to new regulations which seek to protect the public good by incorporating creative, acceptable urban design efforts for future development" and to improve the complicated and multi-layered development process "to ensure residents of the County are provided with high quality developments that have a minimal impact on citizens." (Staff report, page 1) She pointed out in her testimony that the community has great interest in achieving the most appropriate future redevelopment of downtown Columbia, and more specifically, minimizing the impact of the approved site development plan (SDP) (on appeal) and issuance of building permits for the 22 story WCI Plaza Tower project (Plaza Tower) on the 30 year Columbia Master Plan (Master Plan) currently being drafted. Petitioner believes that despite the Plaza Tower being "technically

complete" and therefore not "pending" under the current regulations, the fact that the SDP approval was properly appealed and is currently under judicial review it should be considered "pending" because the administrative and judicial process has not been completed. Nonetheless, Petitioner asserted that application of this proposed legislation to the Plaza Tower is not truly retroactive but consistent with the zoning regulations and Maryland law because their rights have not vested. (Refer to Planning Board Recommendation on Petitioner's companion legislation, ZRA 79)

Citizen Testimony

The Board received both extensive written and oral testimony via the public meeting process held on April 17 and May 24, 2007. There were 111 individuals representing themselves or on behalf of businesses or community organizations who signed in to give oral testimony over the two dates. (See attached Public Testimony List) To further encourage public participation and provide ample opportunity to comment, the Board kept the record open until June 1, 2007. The oral and written testimony was comprised of citizens from within and outside the County, business leaders, community leaders, contract purchasers for the Plaza Tower, citizens who were downsizing or retiring or returning to the area, elected public officials, and attorneys for interested parties.

Proponent's Testimony

Almost every proponent testifying in support of ZRA-83 also supported ZRA-79 and seemed to indicate at least one common reason for their support for the proposed legislation and the companion legislation ZRA-79: to halt the construction of the 22 story Plaza Tower. The reasons were, however, varied. Many stated that both pieces of legislation will accomplish many positive results: inclusion of the Plaza Tower in the Master Planning process; strengthen the people's voice and participation in the approval and administrative/judicial appeals review processes; improve the development process to include matters under judicial review; allow implementation of ZRA-79, if it is ultimately adopted; and provide additional leverage and incentive for the Plaza Tower developer and concerned citizen and community leaders to reach an amicable resolution including possible relocation of the tower to another, more appropriate locations.

Numerous proponents fully agreed with the Petitioner's belief that this legislation will not have an illegal impact on the business community or the Plaza Tower project because the developer's rights had not vested and they would be bound by any zoning amendment changes before that time.

Several proponents rejected the argument that ZRA-83 would harm Howard County's

 business and development and economic climate in any way. They asserted that the County's location and economic diversity and strength would overcome any reluctance of the outside business community to continue to seek to do business in Howard County. Some commented that this legislation honors a pre-election campaign promise to address citizen concern that the downtown development be in accordance with the Master Plan and reflect the need to have more community input in the zoning process which some considered flawed.

Opponent's Testimony

Numerous individuals, business owners, and business community members testified in opposition to ZRA-83. There were several common themes that reoccurred in virtually every opponent's testimony: fairness, procedural reliability, predictability, consistency; and implications on future economic growth.

With respect to fairness, repeated testimony highlighted the punitive purpose of ZRA-83 as being proposed solely for the purpose of reducing the Plaza Tower's height even after they had followed all the approval requirements clearly stated in the New Town regulations which they believe is a very public, open and participatory process. Many asserted this was changing the rules in "mid-stream" and is inherently unjust. Furthermore they stated that it is not a good planning tool and introduces an unacceptable degree of uncertainty and unreliability, limits consistency and undermines public confidence in a governmental process.

Opponents repeatedly stated that a government's processes, outcomes and its past practices and policy decisions in implementing the zoning regulations should be the benchmark of good planning and decision making. It should not be subjected, according to opponents, to the whims of politicians, the influence of a powerful minority nor should legislative authority be a tool used to address a single project or unpopular decision made pursuant to the established rules and procedures set out in the zoning regulations. Many pointed out that the legislative process should not be used to usurp or subvert the established administrative judicial processes. Opponents predicted the chilling effect the grandfathering legislation would have on future economic development because it crosses all land use zones. They foresaw the reluctance of business to locate into or expend in the County because there would be no assurance that a single appellant could not stall their project. Their project would be subject to a potential regulatory change even after considerable financial investment and expert preparation time had been devoted in order to comply with the zoning regulations' many approval stages. Numerous business leaders testified that the cost of both the threat of ambiguity and

of a project actually being revoked after-the-fact would introduce greater risk into financial institutions' decisions to commit funding which would ultimately drive up costs to the borrowing firm and eventual consumer. Others spoke how ZRA-83's retroactive regulatory changes would sacrifice predictability leading to a competitive disadvantage that other jurisdictions do not have and would gladly exploit in their efforts to secure economic development away from Howard County.

Additional opponent arguments included that the grandfathering legislation is the result of fear of change and growth and its motivation was self-interest and not community need. Also testifying were individuals who would be personally affected by the grandfathering legislation because they have reservations to purchase condominium units in the Plaza Tower.

Planning Board Discussion and Supporting Rationale

The Board reviewed and evaluated the petition, testimony and the DPZ staff report. During its work session, the Board discussed the arguments for and against ZRA-83 and unanimously agrees with the DPZ recommendation to DENY ZRA-83. The Board concurs with the rationale provided in the DPZ staff report as the basis for denial and further provides additional rationale as the basis for this recommendation of DENIAL as follows:

First, the Board evaluated what the current development approval process, in place for all zones, included. The Board concluded that the development process and in particular in the New Town zone is extensive, complete and designed to and does in fact ensure orderly, well planned development. Each stage serves a different and specialized focus so that projects do not move on to the next stage without fulfilling the requirements of the previous stage. The time and cost required to move to the next stage can be significant; it allows sufficient time and opportunity for public participation, including the administrative appeals process. The Board concluded that any project that proceeds while under appeal and judicial review does so at their own peril because the risk of a contrary judicial decision could require changes and eventual costs that would significantly alter the project. The inclusion of the term "judicial review" is not needed to correct a perceived flaw in the zoning regulation which the Board determined did not effectively exist prior to the SDP approval of the Plaza Tower project.

Second, the Board concluded that instituting the changes to the grandfathering procedures and policy would introduce uncertainty and inconsistency in the zoning regulations and approval process and would impact the County's ability to attract, retain, and support economic development. The resources required to develop a project (surveying, studies, design work, etc.), the time it takes

to move through the various stages of the approval process, and the dollars required to change the project to reflect governmental and community input are substantial. To open up a project to potentially more changes and costs after citizen input was already required would reduce confidence in the development process without increasing benefits to the community.

Third, the Board determined that the existing approval process is both lengthy, dependent upon fact and requires the opportunity for citizen involvement in the early stages. This opportunity is offered to allow for the timely and reduced cost changes of projects. It requires pre-submission community meetings to identify concerns that the government and the various Boards will consider in rendering decisions. The process allows for the various boards to approve, reject or modify a project's plans. This is where citizen involvement will do its most good. The Board also underscored the continuing issue with how a party's status is defined could further complicate this legislation if it permits too wide or narrow a definition.

Fourth, the Board determined that ZRA-83 is not in harmony with the 2000 Howard County General Plan. With respect to Policy 5.20, that policy is clearly intended to encourage public participation in and widen representation on community planning teams, to offer assistance to local community groups to develop self-directed community enhancement initiatives and to monitor implementation of Community Master Plans. It is not referencing increase citizen involvement in stages beyond those already established in the regulations for the purpose of shaping vision and outcome.

Fifth, the Board strongly rebuts the petitioner's claim that allowing the current grandfathering practices to be eliminated benefits an open communication process. Instead, the Board notes that the General Plan (pg 244) clearly calls for citizen participation at earlier junctions in order to influence land use decisions. The General Plan states that once fundamental decisions are made there is relatively little latitude for making land use and design changes on specific development projects. The limited opportunity to influence projects that are being developed in accordance with County regulations can be very frustrating to citizens, especially if they did not participate in the earlier stages. Therefore, the General Plan calls specifically for the necessity of significantly expanding opportunities for citizens to participate in the early stages of the County's planning and decision-making process. The Board believes that the General Plan summarily prefers earlier intervention in projects rather than the 11th hour as this amendment would permit.

Sixth, allowing projects under appeal to be subject to new regulations encourages frivolous

appeals in the hope that it would be possible to get sympathetic legislation passed while the appeal process is underway. The Board recognized that either side may seek this strategy. On the flip side, a citizen's group may consider its victory safeguarded when the developer appeals and simultaneously seeks adoption of sympathetic regulation. The Board recognized the ease by which proposed regulatory changes are often missed by the public at large and are generally unnoticed by specificissue citizen groups. Once the appeal is completed regardless of outcome, the new pro-developer regulations could apply and the citizens groups would have no redress. The chance to have sympathetic legislation adopted increases during times of massive regulatory reviews,

Comprehensive Zoning or as simply during citizen "busy times". ZRA-83 would require the constant effort to review pending legislation before the Board and the County Council. Not considering who might benefit from the new regulations, this scenario convey show easily the process can be manipulated if watchfulness slips.

Seventh, the Board believes it to be fundamentally unfair to apply new requirements to a project after it has received approvals and has proceeded beyond the Comprehensive Sketch Plan or Sketch Plan phases. No testimony was provided nor could be recalled of instances where existing grandfathering practices resulted in a detriment to the public's welfare or safety.

Eight, the Board concluded that ZRA-83 would require exceptions to be continually added to the regulations creating a management oversight burden and monitoring requirement that is not presently needed.

Planning Board Decision

Mr. David Grabowski made a motion to DENY the petition in accordance with the recommendation of the DPZ Technical Staff Report. Mr. Rosenbaum seconded the motion. The motion for denial of the petition in accordance with the recommendation of the DPZ Technical Staff Report passed by a vote of 4 to 0.

For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 19th day of July, 2007, recommends that the Petitioner's request to amend Section 100.E. of the Zoning Regulations to create a grandfathering clause that would require cases that are under judicial review to be subject to Zoning Regulation changes for all pending and future proceedings and action of any Board, Hearing Examiner, or agency empowered to decide applications under the Zoning Regulations, be DENIED.

1	HOWARD COUNTY PLANNING BOARD
2	The total
3	Tammy J. Gitara Manis, Chairman
4	Lawid Grahowski (Tge)
5	David Grabowski, Vice-Chair
6	Anda a Dimsrowske
7	Linda A. Dombrowski
8	my my
9	Gary Rosenbaum
10	ABSENT
11	Ramsey Alexander
12	
13	ATTEST:
14	marshe S. In length_
15	Marsha S. McLaughlin, Executive Secretary
16	·
17	
18	

7/20/2007

TAShared\Director's Office\Lisa K\PB\041707 hearing testimony list

Public Testimony List Planning Board Meeting on ZRA 79 and ZRA 83 April 17 and May 24, 2007

Cede Time to				the state of the s		Participation	PERIODIC PROPERTY.					Authorities and a state of the												7		78844			awana				-							771474	***************************************		
		-																#35 - Boho						-	1100000	petition			-				#10	DIOL - 01 #	Ī							-	
Written Testimony	×	×	×	×	×	×	×	×	×	×	×	>	×	×			>		277	×	<	×	×		×			00000000	70 Billion Co.	×	×	>	<				>	<			The state of the s	×	
Speaking For		Chamber of Commerce		African American Coalition				Bring Back the Vision	Bring Back the Vision	777777777777777777777777777777777777777	Attendance of the state of the	Business Alliance of Ho Co		HC Chamber			HCCC		Residents/Rusiness	Community		General Growth Properties	Homebuilders of MD			PARTITION	**************************************	- Application		Linowes & Blocher/ GGP/HRD		Alliance for a Better		778444	a managarity and the second se		Harners Choice Village Bd		THE SWALLS				11111111
Signed up but did not speak							The state of the s												-																								-
esoddo	×	×	×	×	×	×	×	×	×	×	×	*		×			×			×		×	×	×	×	×	×			×							-						×
Support													×		×				-		×					*		×				×			< ×	×	×	×				×	
Zp	21044	21042	21163	21044	21794	21042	21029	21041	21044	21042	21043	21044	21044	21044	21044	21044	21042	21044		21042	21044		21207		21044		21045	21044		20814	21044	21045	21044	21044	21044	21044	21044	21045	21075	21044		21044	21042
State	Ω	ΔM	MD		\neg	MD	MD	Ω	MD	MD	QW	Q	Q₩	Q₩	₽	QM	QM	QM		M	ΔM		QW	ΩM	₽	MD	MD	ΩW		Q	MD	QM	CM	Ę	Ę	Ε	9	Q N	QW MD	MD M		MΩ	2
City	Columbia	Ellicott City	Woodstock	Columbia	West Friendship	Ellicott City	Clarksville	Columbia	Columbia	Columbia	Ellicott City	Columbia	Columbia	Columbia	Columbia	Columbia	Ellicott City	Columbia	7777	Ellicott City	Columbia	-	Baltimore	Columbia	Columbia	Columbia	Columbia	Columbia	1	Bethesda	Columbia	Columbia	Columbia	Columbia	Columbia	Columbia	Columbia	Columbia	Elkridge	Columbia		Columbia	Ellicott City
Address	10386 Green Mountain Circle	3806 Plum Meadow Drive	10612 Hillingdon Road	11370 Heathertoe Lane	13975 Roven Hill Road	4564 Kingscup Court	11795 Braedon Wood Road	10323 Wilde Lake Terrace	10323 Wilde Lake Terrace	10211 Wincopin Circle, #600	8509 Union Mills Court	10001 Windstream Drive, Ste 201	11915 Gold Needle Way	12214 Sleepy Horse Lane	5626 Vantage Point Road	5014 Round Tower Place	11130 Homewood Road	10722 Autumn Splendor Dr		10203 Castlehill Court	5671 Vantage Point Road		1502 Woodlawn Drive	10474 Gray Owl Garth	11309 Ridermark Row	10327 Wilde Lake Terrace	7421 Swan Point Way	12118 Blue Flag Way		7200 Wisconsin Ave	6098 Covington Road	9572 Basket Ring Road	5681 Thicket Lane		Place	5561 Suffield Court	Way		Sourt	Circle			2941 Excelsior Springs Court
Last		KarFonta	Sachs	Howell	Scully	Abdallah	Sosinski	Davis	Davis	Skalny	Lane	Madzel	England	Mumpower	Meskin	Waters	Armiger	Ford		Kaufman	Schnetzler	Godine	Ballentine	Lawson	Eagan	Lincoln	Toler	Lawson		Brown	Leonard	Hekemian	Wright	Scott	Smith	Bobo	Johnson	Swatek	Holt	Bería		Knowles	Ohnmacht
<u>M</u>	1 Sharonlee		3 Steven	4 Sherman	5 Mary Ann	6 Joan	7 Tim	8 Michael	9 Joanne	10 Paul	11 Gregory	12 Malynda	13 Brian	14 Gordon	15 Stephen	16 Laura	17 Earl	18 George		19 Gary	20 Beverly	21 Douglas	22 Tom	23 Barbara	24 Lin	25 Emily	26 Louis	27 Marvin 28 MISSING		29 Todd	30 Dave	31 Alex	32 Barbara	33 Charles	34 John David	35 Elizabeth	36 Rebecca	37 Russell	38 Regina	39 Michael	40 MISSING	41 Lloyd	42 Rich

7/20/2007

T:\Shared\Director's Office\Lisa K\PB\041707 hearing testimony list

Public Testimony List Planning Board Meeting on ZRA 79 and ZRA 83 April 17 and May 24, 2007

Columbia
Columbia
Columbia
Clarksville
Columbia
Baltimore
Silver Spring
Reisterstown
Reisterstown
Columbia
Columbia
Columbia
Columbia
Ellicott City
Ellicott City
Columbia
Ellicott City
Ellicott City
Ellicott City
Columbia
Fulton
Columbia
Ellicott City
Burtonsville
Columbia

Public Testimony List Planning Board Meeting on ZRA 79 and ZRA 83 April 17 and May 24, 2007

e de la companie de l								<u>8</u>	dn peut		Minister	
A VALUE OF THE PARTY OF THE PAR	TST TST	1887 1887 1887	Address	Ö	State	8 8	Support A	Support Oppose but did not speak	t did not speak	Speaking For	Testimony	Cede Time to
87	87 Ron	Meliker	10146 Maxine Square	Ellicott City	QW	21042		×			×	
88	88 Gary	Coyle	11204 Silver Tree Place	Columbia	₽	21044	×					#82 Cindy Coyle
89	89 Charles	McMahon	arkway	Columbia	₽	21044		×		GGP		#95 - Charles McMahon
06	90 Caroline	Sherman		Columbia	<u>M</u>	21044		×		The second of th	×	
91	91 Dennis	Lane	8144 Winding Ross Way	Ellicott City	QW M	21043		×		Emerson Holdings, LLC	×	
95	92 MISSING			Webs and the second						· history		
93 /	93 Ann	Ivester	10315 Wilde Lake Terrace	Columbia	QW.	21044		×			×	
94	94 David	Yungmann	14750 Addison Way	Woodbine	GΜ	21797		×			×	
92	95 Mark	Thompson	4250 Blue Barrow Ride	Ellicott City	MD	21042		×		GGP	×	Time from #89
96	96 Paul	Kraft	2212 Siena Way	Woodstock	₽	21163		×		Clydes of Columbia	×	The state of the s
97	97 Mark	Bishoff	10331 Wilde Lake Terrace	Columbia	Q¥	21044		×		n modelinations		Transferance and the second
186	98 David	Barrett	5038 Stevens Forest Road #222	Columbia	₽	21045		×			×	100F-44 0-0-0-44 1
66	99 Cole	Schnorf	4612 Willowgrove Drive	Ellicott City	Q₩	21042		×		The state of the s	×	
1001	100 David	Lynch	6329 Sea Way Drive	Columbia	GΜ			×			×	
101	101 Stuart	Chandler	8922 Rosewood Way	Jessub	QΜ	20794		×		And the state of t	×	
102	102 Rakesh	Patel	10420 Swift Stream Place, Apt. 110 Columbia	Columbia	QW	21044		×			×	
103	103 MISSING									ann ann an an ann ann an ann ann ann an		**************************************
104	104 Linda	Odum	10129 Hyla Brook	Columbia	MD	21044		×			×	
105 Ron	Ron	Brasher	5560 Sterrett Place, Ste. 300	Columbia	G₩	21044		×		THE PRINCIPLE AND ADDRESS OF THE PRINCIPLE AN		77 WHAT - 445 MINES
106	106 Mark	Cissell	11813 Tall Timber Drive	Clarksville	 QM	21029		×		Howard County Chamber	×	
										Coalition for Columbia's		
107	107 Alan	Klein	11006 Wood Elves Way	Columbia	물	21044	×			Downtown	×	Time from #82, 83, 88, 92
108,	108 James	Lano	10275 Little Patuxent Parkway	Columbia	MD	21044		×		GGP	×	The state of the s
109	109 David	Forester	11023 Thistle Brook Court	Columbia	₽	21044		×				
110	110 Alan	Deutch	6301 Bright Plume	Columbia	Q¥	21044		×		The second secon	×	
111	111 Steve	Shipp	1211 Wincopin Circle	Columbia	Q₩	21044		×		Lemmar	×	